

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANDREW MATTHEIS, §
§
Plaintiff, §
§
v. § Civ. A. No.: 4:16-cv-3381
§
ATLAS COPCO §
COMPRESSORS, LLC, §
§
Defendant. §

NOTICE OF REMOVAL

Defendant Atlas Copco Compressors, LLC (“Atlas”), files this Notice of Removal of the civil action filed against it by Plaintiff Andrew Mattheis (“Plaintiff”) to the United States District Court for the Southern District of Texas, Houston Division, based on complete diversity between the parties. In support thereof, Atlas respectfully shows the Court as follows:

I. The State Court Proceedings

1. Plaintiff filed his Original Petition on October 12, 2016, in the 55th Judicial District Court of Harris County, Texas. Plaintiff’s case was assigned cause number 2016-69216.
2. Plaintiff contends that Atlas discriminated against him in violation of the Texas Commission on Human Rights Act on the basis of his perceived disability.
3. Atlas was served with process on October 21, 2016. It filed its answer with the state Court on November 14, 2016, generally denying Plaintiff’s allegations.
4. Plaintiff demanded a jury in the state court.
5. No further proceedings have taken place in the state court.
6. The time within which Defendant is required to remove has not yet expired.

II. Removal Based on Diversity Jurisdiction

7. This Court has jurisdiction over the state court action pursuant to 28 U.S.C. § 1332 because it is a civil action between citizens of different States, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of costs and interest.

A. Plaintiff is a citizen of Texas and Atlas is a citizen of Delaware.

8. Pursuant to Plaintiff's Original Petition, Plaintiff is domiciled in Harris County, Texas and is therefore a citizen of the State of Texas. Exhibit B at p. 1.

9. Atlas is a foreign limited liability corporation organized under the laws of State of Delaware. Because Atlas is a limited liability corporation, its citizenship is determined by the citizenship of its members. *Tewari De-Ox Sys., Inc. v. Mountain States/Rosen, Ltd.*, 757 F.3d 481, 483 (5th Cir. 2014); *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). Atlas's sole member is Atlas Copco North America, LLC, a Delaware limited liability corporation, its principal place of business at 94 Elm Street, Floor 4, Westfield, MA 01085-1689. Thus, Atlas Copco Compressors, LLC is a citizen of Delaware for purposes of diversity jurisdiction. As a result, complete diversity exists between the parties.

B. The amount in controversy is more than \$75,000.

10. Plaintiff states in his Petition that he is seeking monetary relief of "over \$200,000, but not more than \$1,000,000."

11. Plaintiff therefore seeks recovery of an amount in excess of \$75,000.00, exclusive of costs and interest. Exhibit B at p. 5; *See Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938) (noting, "[T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith"); *Johnson v. Affiliated Computer Servs., Inc.*, 500 F. App'x 265, 266 (5th

Cir. 2012) (diversity jurisdiction existed when plaintiff demanded \$100,000 in compensatory and punitive damages).

III. Additional Matters for Removal

12. Pursuant to 28 U.S.C. § 1441(a), the United States District Court for the Southern District of Texas, Houston Division, embraces the place in which the removed action was pending. Thus, this District and Division are proper for removal purposes.

13. Pursuant to S.D. Tex. Local R. 81, this notice of removal is accompanied by copies of the following:

- a. All executed process in this case (Exhibit A);
- b. Pleadings asserting causes of action and defenses:
 - i. Plaintiff's Original Petition (Exhibit B),
 - ii. Atlas's Answer (Exhibit C);
- c. The state court docket sheet (Exhibit D);
- d. An index of documents being filed (Exhibit E); and
- e. A list of all counsel of record (Exhibit F).

14. Atlas will promptly file a copy of this Notice of Removal and all exhibits with the clerk of the state court in which this action has been pending.

15. This notice of removal has been served on all parties to the removed case.

IV. Prayer

Defendant Atlas Copco Compressors, LLC prays that this Court take jurisdiction of this action to the exclusion of any further proceedings in the state court, compel it to arbitration, and dismiss it with prejudice.

Respectfully submitted,
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

/s/ Carolyn Russell
Carolyn Russell
SBOT: 24003913
Federal I.D.: 25141
One Allen Center
500 Dallas Street, Suite 3000
Houston, TX 77002
713.655.0855
713.655.0020 (Fax)
carolyn.russell@ogletreedeakins.com

ATTORNEY-IN-CHARGE

OF COUNSEL:

Stephen J. Quezada
SBOT: 24076195
Federal I.D.: 1348753
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
One Allen Center
500 Dallas Street, Suite 3000
Houston, Texas 77002
(713) 655-0855 (phone)
(713) 655-0020 (fax)
stephen.quezada@ogletreedeakins.com

CERTIFICATE OF SERVICE

I certify that a true copy of this document was served upon the following according to the Federal Rules of Civil Procedure on November 16, 2016:

Gregg M. Rosenberg
ROSENBERG & SPROVACH
3518 Travis, Suite 610
Houston, Texas 77027
Gregg@rosenberglaw.com
713-960-8300 (Phone)
713-621-6670 (Fax)

ATTORNEY FOR PLAINTIFF

/s/ Carolyn Russell

Carolyn Russell